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Supreme Court, U.S.
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IN THE OFFICE OF THE CLERK

Supreme Court of the United States

D.G., Guardian Ad Litem for J.G., a Minor,

Petitioner,

v.

NORTH PLAINFIELD BOARD OF EDUCATION, RICHARD GRECO, Director of Pupil Services, JANE DELANEY, Supervisor, Special Education, and MARILYN BIRNBAUM, Superintendent,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE NEW JERSEY SUPERIOR COURT APPELLATE DIVISION

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The New Jersey Supreme Court, by denying Certification, affirmed the Appellate Court's ruling to uphold the Trial Court's decision where (a) after four years of consolidation the case was severed with the IDEA portion being sent back to the OAL which adversely impacted the Petitioner, J.G.'s (hereafter J.G.) case; (b) J.G. was denied the right to have his trial remain in Somerset County where it had been for four years because the Court refused to either, install a ramp to the witness box so plaintiff could testify with everyone else or put a table on the floor and require all witnesses to testify from that location, but instead transferred the matter to a different County which had access; (c) approving the Trial Court Judge's derogatory comments, and the derogatory comments and behaviors by Respondent, North Plainfield Board of Education, et al.'s (hereafter North Plainfield Board of Education) trial counsel, regarding J.G.'s disability during trial; and (d) agreeing with the Trial Court's refusal to vacate the verdict and order a new trial where there was *prima facie* evidence of violations of the American with Disabilities Act, 42 U.S.C.A. § 12101-12213 (hereafter ADA).

Four questions are presented:

1. Does an action brought pursuant to the Individuals with Disabilities Education Act, 20 U.S.C.A. § 1400-1487 (hereafter IDEA) have to be heard in an administrative setting or can it be heard in a state court in situations like here, where the IDEA action that was started in the Office of Administrative Law (hereafter

OAL), was consolidated with the New Jersey Law Against Discrimination Act, N.J.S.A. 10:5-1, et seq. (hereafter NJLAD) and ADA action in the Superior Court by order of the Court and with the consent of the parties?

2. Does the ADA require a Court to make reasonable accommodations for a litigant in a wheelchair to testify from the witness box like everyone else, so they can stay within their own County, or does it allow the Court to send the trial to a different County which is accessible, thereby denying the litigant the right to be heard in the County in which individuals who are not in a wheelchair would have their litigation heard?

3. Is it a violation of the Fourteenth Amendment to the U.S. Constitution, commonly known as the Equal Protection Clause, and the ADA for a Judge to make comments about the movements and behaviors of a disabled party during trial, which are part of the individual's disability, and for the Judge to allow the adversary to do likewise thereby impacting the perceptions of the jury particularly in a case that resolves around the said disability?

4. Does the ADA require a Judge to order a new trial when there is *prima facie* evidence of discrimination and violations of the ADA?

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OPINION BELOW

The New Jersey Supreme Court, docket number 62,649 denied Petitioners Petition for certification on July 15, 2008 (App. C). That petition being brought for certification and review of the April 9, 2008 opinion of the Appellate Division, docket number A-3988-05 (App. A). The Appellate Court's opinion affirmed the lower court's decision dated March 17, 2006 denying J.G.'s motion for a new trial (App. D). In so doing the court confirmed the verdict by a jury against J.G. and in favor of North Plainfield (App. E). None of these decisions have been published.

JURISDICTION

The New Jersey Superior Court Appellate Division affirmed the lower Court's decision on April 9, 2008. The New Jersey Supreme Court rendered its decision on July 15, 2008 denying Petitioner's Petition for Certification. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

American with Disabilities Act, 42 U.S.C.A § 35.150

> (a) *General.* A public entity shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities

American with Disabilities Act, 42 U.S.C.A. § 12132

> No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

Fourteenth Amendment to the U.S. Constitution

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

1. When this matter started J.G. was a minor. He has cerebral palsy and has always been in regular education in regular school. While there were always problems with the administration and J.G.'s Individualized Education Program (hereafter IEP) the problems escalated in fifth grade. After J.G.'s mother filed a DYFUS charge against the school, and an aide, for dumping chemicals on him, the school retaliated.

When it came time for J.G. to go into sixth grade he was told that the school was not accessible so he would not be allowed to attend with his peers. The school actually wrote a letter to this affect and it took a demonstration in front of the school to get J.G. to be admitted.

There were issues of IEP violations, refusal to make bathrooms ADA compliant, the aides were untrained, etc. Administrators were telling J.G.'s mother that J.G. belonged in a C.P. School and if she continued to demand compliance from them, they would put him there.

2. On June 15, 2000 a complaint was filed in the OAL. On June 7, 2001 a motion for leave to file an Interlocutory Appeal was made and granted by the Somerset County Superior Court. On June 28, 2001 a complaint was filed in the Somerset County Superior Court. The complaint encompassed the same issues as were in the OAL and a few others. It updated everything through the then current school year. It included the refusal of North Plainfield Board of Education to provide J.G. with an accessible bathroom and broken

and obsolete wheelchair lifts. There were charges of violations of the ADA and NJLAD.

Judge Hoens consolidated the cases and this was consented to by the parties. It was memorialized again with Judge Gasiorowski, also with the consent of the parties. The case remained consolidated for four years.

North Plainfield Board of Education's insurance company became insolvent which caused delays in the proceedings and eventually they were removed from the case. The claim was taken over by New Jersey Property Liability Insurance Guaranty Association (NJ PLIGA).

The Defendant's new attorney, John Schmidt, on the eve of trial, moved for a dismissal of the counts of the complaint dealing with the OAL matters saying they were moot. Judge Kumpf denied the motion but instead *sua sponte* severed the cases and sent the OAL portion back to the OAL.[1] He argued that under federal law, the case had to proceed through the administrative channels and under no circumstances could it be heard in Superior Court (App. B).

3. Prior to the start of the trial, J.G.'s counsel made a request to the Court to make accommodations for J.G. who is in a power wheelchair. He needed access to the Courthouse, a courtroom that was accessible and accessibility to the witness box so he could testify in the same place and same manner as all other witnesses. The

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1. The OAL Judge determined that all the matters were moot. The case has been appealed to the United States District Court for the District of New Jersey.

Court refused to make the accommodations and instead forced J.G. to request to have the case transferred to a County that was accessible. The motion was granted and the case was moved to Hunterdon County.

4. During the trial, the defense counsel complained about the movements and behavior of J.G. These included laughing and moving in his chair. Ironically, North Plainfield Board of Education spent many years with J.G. and was fully aware of how his disability worked with his emotions and they also knew that he needed to move around in his wheelchair for comfort and health. So these attacks by the attorney were no more than an attempt to prejudice the jury.

This was a great tactic to harass J.G. as the Judge admonished him. Throughout the trial, the Judge commented on J.G. to the jury or to his counsel. J.G. was forced to repeatedly leave the courtroom because he could not move around freely in his wheelchair. Other people in the Courtroom with wheelchairs and scooters were allowed to move about freely in their chairs and, of course, people without disabilities could move about in their chairs without comment or stares. Whenever J.G. did move, defense counsel would stop what he was doing and glare at J.G. until he was finished. This intentional act would bring the attention to J.G. Although this cannot be seen by the transcripts, counsel admitted same before the Appellate Division.

5. After the trial, the jury returned a verdict in favor of North Plainfield Board of Education. On March 17, 2006 J.G. moved to vacate the verdict because there was *prima facie* evidence of discrimination and ADA

violations. At trial, a letter was produced from the North Plainfield Board of Education to J.G.'s attorney telling her that the school that J.G. was supposed to attend was not accessible and therefore alternative placement would have to be found. This was confirmed during trial. Additionally, J.G.'s expert's report made a recommendation that the teacher's bathroom be made into a unisex/handicap bathroom. The North Plainfield Board of Education maintained at trial that 1) what the expert requested could not be done and, 2) despite this they had created a unisex bathroom. They maintained this despite evidence to the contrary. After the trial they actually did follow the recommendations as set forth by the expert thereby proving that they were not in compliance and they actually perjured themselves during the trial. This was denied.

6. The matter was appealed to the New Jersey Appellate Court on April 6, 2006 and they decided in Respondents' favor on April 9, 2008.

7. After the granting of an extension on the time to file on May 30, 2008, a Petition for Certification was submitted on June 6, 2008 to the New Jersey Supreme Court. The Certification was denied on July 11, 2008.

REASONS FOR GRANTING THE PETITION

This Petition should be granted because the decision below flies in the face of this Court's prior rulings with regard to the ADA as well as other Federal Court rulings. Congress has made it clear, and this Court has agreed, that the Fourteenth Amendment of the Constitution protects individuals from being discriminated against and through Title II of the ADA; it has been applied to people with disabilities.

If this Court does not step in now and make it clear that; 1) educational facilities cannot discriminate against people with disabilities and; 2) the legal system also cannot discriminate against people with disabilities, it will be thwarting the strides that have been made with the ADA. The public policy of wanting to include people with disabilities in everyday life and thereby make them productive members of our society needs to be protected. This Court must be ever vigilant of cases where this is not happening.

I. REVIEW IS WARRANTED BECAUSE THE STATE COURT IMPROPERLY APPLIED THE LAW REGARDING THE VENUE FOR IDEA CASES.

Judge Kumpf, the Judge who was to preside over the trial, severed the OAL portion of the case, four years after it's consolidation, and sent it back to the OAL for disposition.

When the trial was transferred to Judge Buchsbaum, a motion was again made on this issue but it was denied.

The Appellate Division decided that the case was improperly brought to the Superior Court and therefore it should be severed. The New Jersey Supreme Court denied review.[2]

This result came about after a motion was made by North Plainfield Board of Education's counsel to have the IDEA matters dismissed due to J.G. not exhausting his administrative remedies. However, the cases were originally consolidated by Judge Hoens with the consent of the parties, and later clarified in a consent order signed by Judge Gasiorowski. Everyone believed that the cases should be together. The trial preparation, witnesses, discovery, etc, were based upon the cases being consolidated. J.G. could not get the relief he was entitled to for the four years while the case was pending in Superior Court.

When the cases were severed, the parties were instructed that no part of the IDEA case could be addressed at trial. This was impossible because the issues were exactly the same. J.G.'s counsel abided by the requirement but the defense counsel did not. Over repeated objections, the Trial Judge allowed North Plainfield Board of Education's attorney to bring in IEP's and other information from the IDEA case. The result was that J.G.'s attorney's hands were tied and ultimately they lost the case.

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2. The Appellate Division was incorrect on this because review of the OAL decisions are the jurisdiction of the County Superior Court, not the Appellate Court.

In his decision, Judge Kumpf opined, "One wonders given the nature of the relief contemplated under the IDEA, what jury question is presented for trial or for determination by the court given the lack of administrative determination to review." (App. B at 44a).

Judge Kumpf based his entire decision on *Waterman by Waterman* v. *Markett-Intermediate School District*, 539 F. Supp. 361 (W.D. Mich. 1999). However, the Courts have carved out exceptions; see *Donoho v. Smith County Bd. of Educ.*, No. 00-5214, United States Court of Appeals for the Sixth Circuit, 21 Fed. Appx. 293; 2001 U.S. App. August 9, 2001, Filed, *Donoho v. Smith County Bd. of Educ.*, No. 00-5214, United States Court of Appeals for the Sixth Circuit, 21 Fed. Appx. 293; 2001 U.S. App., August 9, 2001, which stated,

> There are 'narrow exceptions to the exhaustion requirement.' *Crocker, 873 F.2 at 936.* 'Exhaustion is not required if it would be futile or inadequate to protect the plaintiff's rights. Nor is exhaustion required if the plaintiffs were not given full notice of their procedural rights under the IDEA.' *Covington*, 205 F.3d at 917 (citations omitted).

Also, in *Pardini v. Allegheny Intermediate Unit*, 420 F.3d 181; 2005 U.S. App., November 12, 2004, on remand at, U.S. Dist. (W.D. Pa., Jan. 17, 2006) US Supreme Court, *cert. denied*, 547 U.S. 1050, 126 S. Ct. 1646, 164 L. Ed. 2d 353 (2006) the Court stated,

> The District Court reached the merits of the Pardinis' complaint without requiring

> exhaustion of administrative remedies under the IDEA because of the 'bewildering bureaucratic nightmare,' they had faced in dealing with the AIU. *280 F. Supp. 2d at 454*. We assume that the court was concluding that exhaustion would be futile and that failure to exhaust was therefore excused. See *W.B. v. Matula*, 67 F.3d 484, 495-96 (3d. Cir. 1995).

It is clear from the case law that Judge Kumpf was incorrect. Obviously all the Judges and attorneys before him believed the proper forum was in the Superior Court. It had come to the Superior Court by way of Interlocutory Appeal. Judge Hoens obviously felt that the exhaustion of remedies was futile or inadequate. It was Judge Kumpf who misapplied the law. He should never have tried to second guess the Judges who had spent so much time on the case.

The decision below conflicts with prior decisions of this Court and this Court needs to send a clear message that the exhaustion of remedies is not always necessary or appropriate. Given the nature of the case, the allegations involved and the fact that this Court has continually worked to uphold the rights of individuals with disabilities, it is necessary to make sure that the lower Courts are following these directives. The New Jersey Courts' disregard for these principles presents a substantial issue justifying Supreme Court review. Additionally, since there are so many children coming through the system who are disabled, this decision will impact upon more than just this case.

II. REVIEW IS WARRANTED TO SETTLE AN ISSUE CONCERNING THE APPLICATION OF TITLE II OF THE ADA AS IT APPLIES TO COURTHOUSES.

A. APPLICATION BY THE TRIAL COURT OF THE ADA CONFLICTS WITH TITLE II OF THE ADA AND THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION.

J.G.'s trial was to be held in the Old Courthouse in Somerville, New Jersey before the Honorable Judge Kumpf. The wheelchair accessible doorway is not manned so access is denied to people using wheelchairs. The courtroom that was to be used had a witness box that was elevated and was not wheelchair accessible.

It was important to J.G.'s case that he 1) have access to the courtroom itself, and 2) that he be able to testify in the same physical location as all of the other witnesses. It was even more important in this instance because the case being heard dealt with the issue of J.G. wanting to be treated the same as the other children in his school as well as access issues.

Somerset County has a procedure that needs to be followed to request accommodations under the ADA. Counsel must contact the Somerset County Civil Division.

J.G.'s counsel made that contact and requested that the door be opened to the courthouse for J.G., a ramp be placed to the witness box when J.G. testified or, in the alternative, that a table be placed on the floor from

where all witnesses could then testify. J.G.'s requests were denied. The administration felt that since the Hunterdon County Courthouse was wheelchair accessible and the witness box was on the floor, there was no need to accommodate J.G. Thus, J.G. was forced to make a motion for a change of venue. Judge Kumpf granted said motion on October 13, 2005.

J.G. did not want to change his venue. J.G. should not have had to change his venue. But for his disability, J.G.'s trial would have been heard in Somerset County; the County where he resides, the County in which the Respondent school was located.

J.G. addressed this issue on appeal and the Appellate Division opined, that since the trial was transferred to Hunterdon County at J.G.'s request, he could not complain. Additionally, they stated that a "litigant is entitled to a fair trial, not a perfect one" (App. A at 19a-20a).

Sadly, the Appellate Division totally ignored the fact that the Court refused to make reasonable accommodations to J.G. pursuant to Title II of the ADA. They believed that since J.G. could not prove that this change affected the outcome of his case, that J.G. was not entitled to a new trial.

Title II of the ADA, § 35.150 referring to existing facilities says, "(a) *General.* A public entity shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities." Additionally, The Supreme Court has made it clear in

Tennessee v. Lane, 541 U.S. 509; 124 S. Ct. 1978; 158 L. Ed. 2d 820 (2004), the U.S. Supreme Court affirmed the Sixth Circuit Court of Appeals finding that

> (a) the due process clause of the *Constitution's Fourteenth Amendment* protected the right of access to the courts, and (b) the evidence before Congress when it had enacted Title II had established that physical barriers in courthouses and courtrooms had had the effect of denying people with disabilities the opportunity for such access,

Citing *Lane v. Tennessee*, 315 F.3d 680; 2003.

The length to which courts could and should go for litigants can be seen in. *Brannick v. State of New Jersey*, United States District Court for the District of New Jersey, 2006 U.S. Dist. Here, the Court moved the courtroom to one where videotaping was available and set aside a separate room for the Plaintiff who had chemical sensitivities. They made sure that there were no chemicals, rugs, etc. in the room to accommodate her illness of chemical sensitivity. Ironically this case was in the same Vicinage as the case at bar.

In the present case, they had much less to do to accommodate J.G. and they refused. It is important that this Court make the lower Court's realize that the denial of reasonable accommodations to individuals with disabilities in the courthouse is not only a denial of their constitutional rights to a fair trial but it also sends a message to others involved in the litigation that they are less deserving individuals. It is particularly

important in cases like the one at bar where the matter being litigated deals with access issues, ADA compliance and discrimination laws.

Moving a case to another County, which is wheelchair accessible, cannot be seen as acceptable when the accommodation requested is so minimal. Litigants should not have to prove that their trial would not be a fair one if they do not receive the accommodation. They are entitled to the accommodation as a matter of right.

In furtherance of J.G.'s assertion is the fact that just this year, Somerset County, in one of its courtrooms, has installed a wheelchair lift that goes to the jury box.

If the ADA did not require this, and the right for a disabled person to testify from the jury box did not exist, the County never would have made this change.

J.G. should not have to prove what the jury thought about the case being in Hunterdon County as opposed to Somerset County. He couldn't anyway because the Trial Judge refused to allow the attorneys to speak with the jury after the trial. Surely, a litigant's rights to reasonable accommodations is not predicated on the fact of whether or not they will lose the case, but rather the issue is that they are human beings and should be afforded the same rights as those without disabilities.

However, to suggest that a person is not affected by having his case moved some twenty-six (26) miles away from his home compared to one that is eleven (11) miles from there, especially when you are disabled and you require the assistance of other people for all of your

needs, is ludicrous. This is not to even address the other factors like the different makeup of the Counties, the different demographics of the people, etc.

The Somerset County Superior Court, and later the New Jersey Appellate Court, disregarded the law in this area. This presents a substantial issue, which justifies the review by the Supreme Court. The New Jersey Supreme Court has clearly showed that it will not get involved in this issue and this leaves future litigants who are confined to a wheelchair in a position of either testifying from a different physical location than everybody else, or requesting a change of venue.

Thus, the importance of the Supreme Court resolution of this issue does not just apply to this case but rather to cases being heard all over the country.

III. REVIEW IS WARRANTED BECAUSE THE STATE COURT IMPROPERLY APPLIED THE LAW REGARDING TREATMENT OF INDIVIDUALS WITH DISABILITIES IN THE COURTROOM.

At the outset of the trial, the tone was set for J.G. and his disability. After opening statements, the defense attorney complained to the Judge that J.G. was being distracting during his statement. The Judge commented that he noticed it too. The Judge was concerned about the courtroom "decorum" being ignored by J.G. J.G. was admonished and told to keep himself in check or be banished from the Courtroom. This so upset J.G. that he was never comfortable in the courtroom again.

J.G. has cerebral palsy. He spends his time in a wheelchair. His feet are tied in with straps. His electric wheelchair has a lot of features that can help his comfort. He can press buttons and it will recline him. Since he cannot move, shift, or stretch like the rest of us, he relies on his wheelchair to do the work. Unfortunately, when you use the controls, the wheelchair makes beeping sounds. After the other attorney started his attack on J.G, he became reluctant to move. In fact, when he did, the other attorney would stop, look at J.G., wait for him to finish, and then go on with what he was doing.

J.G.'s disability is a neurological one. It plays on his emotions and responses as well as his physical abilities. He has what is referred to as a startle reflex where he will jump if he is frightened or startled. Loud noises or voices will make him jump. Also if someone intimidates him he will react. He can sometimes laugh or cry in response to something said that would trigger an emotion.

Once the Judge accepted that J.G.'s responses and movements were not intentional, he continually made comments to the jury. Due to this insensitivity to J.G.'s disability, J.G. was forced to leave the courtroom on a regular basis during the trial. The Judge wanted to again comment on this, but over objection by J.G.'s counsel, he relented.

It is interesting to note that there were members of the disability community present during parts of the trial who came out to support J.G. and his cause. The supporters came in electric wheelchairs and scooters. Their assistive devices also made noises. Nobody

complained about them. Also, one of the defense witnesses, Linda Ciufo, indicated to the Court that she had a back problem and might need to stand and move around during her testimony. The Judge had no problem accommodating her and no big issue was made of her request.

The New Jersey Appellate Court did not see that the Judge's comments, and the admitted actions of defense counsel, were discriminatory toward J.G. The New Jersey Supreme Court, by denying J.G.'s petition, concurred. However, this Court has consistently held that the due process clause of the Fourteenth Amendment entitles a litigant to a fair trial. Title II of the ADA requires reasonable accommodations so that a person can enjoy the benefits of a service or program.

How does a person get a fair trial when they're every movement or emotion is questioned, commented upon and criticized? J.G. could not even be present at all stages of his trial. He had to spend so much time trying to control a disability over which he has no control; he could not even be himself. He was self-conscious, the attorneys were self-conscious of his movements and to suggest that the jury was not made to be equally as conscious of these differences is ridiculous. The suggestion was implanted in their minds that J.G was disruptive, annoying and otherwise a problem. No wonder why they came back with a verdict for the Respondents. They had a poor perception and understanding of J.G.'s disability.

It is imperative that the Supreme Court addresses this issue. Lower Courts must be made to understand

that they cannot make derogatory comments about people with disabilities. Can you imagine a Judge saying to the jury, "just ignore the Ebonics coming from the plaintiff's mouth", or telling a gay couple they could not hold hands in a courtroom. Well that's the equivalent of what was done here and it is up to this Court to make it clear that it will not be tolerated.

IV. REVIEW IS WARRANTED TO SETTLE AN ISSUE AS TO WHAT CONSTITUTES PRIMA FACIE EVIDENCE OF VIOLATION OF THE ADA.

At the conclusion of J.G.'s trial, the jury rendered a verdict against him (App. E). This was done even though there was *prima facie* evidence of discrimination and violations of the ADA. As a result, J.G. moved to set aside the verdict and order a new trial. Judge Buchsbaum denied it on March 17, 2006. In denying it the Judge stated that he did not want to reopen the case because of the bad public policy ramifications. He says this when counsel presents evidence that North Plainfield Board of Education was not being forthright with the Court and the jury about the bathroom situation. As evidence J.G.'s counsel submitted proof that after the trial they did what they said could not be done with regard to the bathrooms.

Additionally, during the trial a letter from North Plainfield Board of Education to J.G.'s counsel was admitted into evidence, which said that Somerset School was not ADA compliant and that J.G would not be permitted to attend. During the trial, the Judge noted that it was an admission by the Respondents of not being

in conformity with the law. Also, there was another document that referred to J.G. as an "impediment" in the hallway. All of this, coupled with the fact that the defendant, Richard Greco, admitted making comments to the affect that J.G. should be with other children with cerebral palsy (implying to J.G.'s mother that he wanted him removed from the school) showed a particular animus toward J.G.

Title II of the ADA applies to schools as well as Courts. The schools are required to make the facilities accessible to people in wheelchairs. Here the school refused. There was no dispute on this issue.

The IDEA entitles a child with a disability to an education like everyone else. The IDEA cannot be implemented if the facility is not accessible. Allowing cases like this one to stand is to mandate that a school system does not have to make a building accessible for children with disabilities and in this way get around the IDEA.

In *Coleman v. Zatechka*, United States District Court for the District of Nebraska, 824 F. Supp. 1360, 24; 1993 U.S. Dist. The defendants suggested that in order for plaintiff to be "qualified" to participate in the roommate assignment program she must not utilize more than half the space in the room. The Court noted

> [The provisions of the ADA] are intended to prohibit exclusion and segregation of individuals with disabilities . . . based on, among other things, presumptions, patronizing attitudes, fears, and stereotypes

> about individuals with disabilities. Consistent with these standards, public entities are required to ensure their actions are based on facts applicable to individuals and not on presumptions as to what a class of individuals with disabilities can or cannot do.

28 C.F.R. Pt. 35, App. Defendants' assumption that plaintiff's use of a wheelchair causes her to utilize more than half the space in a dormitory room falls far short of the individualized assessment that is required by the ADA. See also *Anderson v. Little League Baseball, Inc.*,794 F. Supp. 342 (D. Ariz. 1992) (blanket policy of prohibiting coaches in wheelchairs from being on the field violates the ADA; baseball league needs to make individualized assessments). *Supra* at 25.

The Court went on to say,

> The ADA's Findings and Purposes illustrate that Congress, in enacting the statute, aimed to bring people with disabilities into society's mainstream, to cause the kinds of interaction which might facilitate recognition of the true equality of human worth as between individuals—regardless of disabilities. In contrast, the university's policy at issue here of excluding plaintiff from the roommate assignment program, how ever well intentioned it may have been, sanctions the attitude that students with disabilities are less desirable and suggests that others should not be required to live with them. Such standoffishness places less value on the

> human worth of individuals with disabilities—because of their disabilities. As implemented, the policy unnecessarily separates students with disabilities from those without disabilities and thus strikes at the essence of the ADA and specifically violates the statute's stated purpose "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities."

Supra at 39.

The same thing happened to J.G. and the Lower Courts have ignored it. The Court needs to hear this case and make it clear to educational facilities that this is not acceptable. If not, children all over the United States with disabilities may be forced out of mainstream education by schools with physical barriers.

Review is warranted in this case because it will not only impact the Petitioner, but will have far reaching effects.

CONCLUSION

For all the foregoing reasons, Petitioner respectfully requests that the Supreme Court grant review of this matter.

Respectfully submitted,

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